

FILED
Clerk
District CourtPROB 12B
(7/93)

FEB - 9 2006

United States District Court

for

For The Northern Mariana Islands
By _____
(Deputy Clerk)*the Northern Mariana Islands***Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearings is Attached)Name of Offender: **Vivian Hocog Lizama**Case Number: **CR 00-00019-001**Name of Sentencing Judicial Officer: **Alex R. Munson**Date of Original Sentence: **October 3, 2000**Original Offense: **Distribution of Methamphetamine, 21 U.S.C. § 841 (a)(1)**

Original Sentence: **Nine months imprisonment and three years supervised release with the following conditions: submit to one urinalysis within 15 days of release and two additional thereafter not to exceed 60 days; participate in a substance abuse treatment program approved by the U.S. Probation Office for narcotic addiction or drug or alcohol dependency which will include testing for the detection of substance use or abuse; refrain from alcohol, seek and maintain gainful employment; and perform 300 hours community service. Supervised release conditions were modified on October 2, 2002 to include: perform an additional 100 hours community service and participate in a mental health treatment program under the direction of the U.S. Probation Office. Supervised release conditions were again modified on December 3, 2003 to include: perform an additional 200 hours of community service under the direction of the U.S. Probation Office. On April 16, 2004, supervised release conditions were revoked and a term of 24 months imprisonment was imposed followed by 12 months supervised release with conditions to include: previously imposed conditions and perform the balance of previously ordered community service hours under the direction of the U.S. Probation Office.**

Type of Supervision: **Supervised Release**Date Supervision Commenced: **September 30, 2005**Assistant U.S. Attorney: **Timothy E. Moran**Defense Attorney: **Danilo Aguilar**

PETITIONING THE COURT☐

To extend the term of supervision for _____ years, for a total term of _____ years.

☒

To modify the conditions of supervision as follows:

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

Report for Modifying the
Conditions or Term of Supervision
with Consent of Offender
Page2

On September 2, 2005, the Ninth Circuit, in United States v. Stephens , No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated the Vivian Lizama's history of drug use, and the drug detection period of her drug of choice. As methamphetamine is considered one of the drugs of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of United States v. Stephens Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Ms. Lizama's mandatory condition to set the maximum number of tests she must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

Vivian Lizama has agreed to the above modification and attached is a Probation From 49 Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with her consent.


Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer
Supervision Unit Leader

Date: 2/7/06

Respectfully submitted,

by: 
MARGARITA WONENBERG
U.S. Probation Officer

Date: 2/8/06

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other


Signature of Judicial Officer

2-9-06
Date

PROB 49
(3/89)

United States District Court

for

District of Northern Mariana Islands

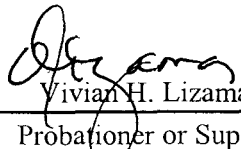
**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

That the defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer;

Witness: Margarita DLG. Wonenberg
U.S. Probation Officer

Signed: 
Vivian H. Lizama
Probationer or Supervised Releasee

1/27/06
Date